

Title IV-E Reimbursement Program for Child Welfare Legal Services

Introduction

This document provides background information and explains the requirements for counties to claim federal Title IV-E reimbursement for legal services related to child welfare cases. The legal services reimbursement program is a new initiative by the Department of Health and Family Services (DHFS) to improve the delivery of child welfare services to children and families by providing financial support for legal services related to protecting the safety of children and achieving permanence for children in out-of-home care. Under the initiative, DHFS will make IV-E funds available on a pass-through basis to counties which have agreements between their child welfare agency and the District Attorney (DA) or Corporation Counsel (CC) office that provides legal services for child welfare cases. The IV-E funds are intended to allow child welfare agencies to collaborate with their DA/CC office to improve legal services for child welfare cases, including increasing the amount of legal staff available to work on child welfare cases or other activities that improve the effectiveness of legal services.

For the IV-E reimbursement program, legal services include activities by attorneys, paralegals, investigators, clerical staff or other staff in DA or CC offices who are involved in providing legal services to county child welfare agencies within human/social service departments. The IV-E reimbursement program also applies to legal services purchased by child welfare agencies from private providers.

Counties can apply to participate in the IV-E pass-through program beginning with calendar year (CY) 2003. Contracts will be issued to county human/social service departments, who can subcontract as necessary with their DA/CC office. The application must include a proposed budget for the legal services reimbursement program, a description of the planned activities, and an agreement between the human/social services department and the DA/CC office on how child welfare legal services will be handled.

The county department must determine office how the IV-E reimbursement will be used in consultation with their DA/CC office, including supporting legal staff positions or other child welfare legal services. If additional positions will be created, the DA or CC office is responsible for obtaining any additional position authority needed. The county human/social services department must provide assurances that the IV-E reimbursement is used to expand legal services or other child welfare program activities and the IV-E funds cannot be used to supplant existing legal services expenditures. Assurances must also be provided that appropriate methods are used to determine allowable costs for the legal services reimbursement program.

Background on IV-E Reimbursement

Federal Title IV-E reimbursement for administrative activities of county human/social service departments is generally claimed by DHFS based on county costs reported through the CARS fiscal reporting system and the Random Moment Time Study (RMTS). RMTS results are used to determine the portion of county costs reported to DHFS through CARS that can be claimed for federal IV-E reimbursement. This method of claiming IV-E reimbursement for administrative costs has received federal cost allocation approval.

Legal services provided by attorneys and other legal staff for child welfare cases are typically not included in the costs reported to CARS and legal staff are not subject to the RMTS. To qualify for IV-E administrative reimbursement, legal staff must be dedicated to working on child welfare cases so the costs can be direct charged to Title IV-E. This includes legal staff dedicated full-time to child welfare cases and legal staff working part-time on child welfare cases. Counties participating in the legal services reimbursement program must use an appropriate method to direct charge legal services costs to Title IV-E. This requires the DA/CC office to have a method to determine the amount of staff and other costs that can be direct charged to Title IV-E.

Reimbursement will be made by DHFS to county human/social departments that develop agreements with their DA/CC office for legal services for child welfare cases. Federal IV-E funds can only be provided to other agencies if those agencies have an agreement with the public child welfare agency that meets the requirements under Section 472 of the Social Security Act. No IV-E funds can be provided to a DA/CC office without such an agreement. The agreement must specify the IV-E reimbursable activities performed by the other agency.

Counties participating in the IV-E reimbursement program must assure that legal services costs included in the program are for IV-E reimbursable activities. New fiscal reporting lines have been established in CARS to ensure that legal services costs claimed for IV-E reimbursement by counties are not included in the administrative costs claimed by DHFS at the state level to avoid double claiming of IV-E reimbursement. Costs used by counties to claim legal services reimbursement must be excluded from existing CARS lines used by DHFS to claim IV-E reimbursement at the state level for county administrative costs. Counties are responsible for maintaining local documentation that costs directly charged to the legal services reimbursement program meet federal requirements for direct charging costs to federal funding sources.

Under the legal services reimbursement program, expenditures for legal services made with non-federal funds are used as match to claim federal IV-E funds. DHFS claims IV-E reimbursement based on expenditures reported by counties and passes through the IV-E reimbursement to counties. County expenditures for match can include existing and new additional expenditures, so existing legal services costs can be used as match. Reimbursement received by counties must be used to improve legal services or otherwise reinvested in their child welfare program. The agreements between the child welfare agency and the DA/CC office must specify the activities included in the reimbursement program.

Amount of IV-E Reimbursement

Title IV-E funds are earned on a reimbursement basis, so costs must be incurred first at the county level to claim IV-E reimbursement through DHFS. The amount of reimbursement is based on the actual amount of reimbursable costs, so the exact amount of IV-E that a county will receive will depend on local expenditures for legal services, including the amount of legal services staff time devoted to IV-E reimbursable activities. Since funds are earned on a reimbursement basis, counties are advised to budget conservatively in their first year of the reimbursement program until counties can more accurately project reimbursable expenditures. If the amount of reimbursable costs for a year exceeds the initial projections for the year, the IV-E reimbursement limit can be increased by DCFS through a contract amendment.

Since the IV-E funds are earned on a reimbursement basis, there will be no prepayments through the CARS system to counties under the legal services reimbursement program.

The net amount of IV-E reimbursement for legal services is based on the federal IV-E administrative cost reimbursement rate of 50% multiplied by the percentage of IV-E eligible children in out-of-home care in Wisconsin. This eligibility ratio is also known as the IV-E "penetration rate" and varies from year to year. **For CY 2003, the net IV-E reimbursement rate for legal services is 33%.** For future years, the net reimbursement rate could change depending on trends in the statewide IV-E penetration rate and changes in federal IV-E fiscal policy. DHFS will announce the net IV-E reimbursement rate applicable to each calendar year period in advance. The amount of reimbursement provided during a contract year will remain fixed at the applicable rate, with adjustments to the net reimbursement rate made as necessary for subsequent contract years

Example: A county currently has an attorney devoted to allowable child welfare legal services and other allowable activities at an annual cost of \$100,000. The county hires a paralegal position at an annual cost of \$50,000. For the total \$150,000 of allowable costs, the county will earn \$50,000 (33%) of IV-E reimbursement. Thus, the existing \$100,000 of legal services expenditures can be used to leverage IV-E reimbursement to support the new paralegal position.

For fiscal reporting in CARS, separate lines are used to report general child welfare activity and activity specifically related to adoption, including termination of parental rights and finalizing adoptions. A separate penetration rate applies to the state adoption program, which historically is higher than the penetration rate for the out-of-home care in general. Based on the fiscal reporting in CY 2003, DCFS will use the adoption CARS line information to compute a "blended" penetration rate for the legal services reimbursement program. This should result in a higher net IV-E reimbursement rate for CY 2004 and subsequent years.

Allowable Child Welfare Legal Services

Costs for legal services must be directly related to the representation of county child welfare agencies in legal actions pertaining to children in out-of-home care or children at risk of placement into out-of-home care. The legal services reimbursement program is focused on child welfare activities under Chapter 48, Stats.

For purposes of the IV-E reimbursement program, the following types of legal services can be used in determining the amount of legal staff time and other expenses qualifying for IV-E reimbursement. While counties may have a broader definition of child welfare cases for local program purposes, the IV-E reimbursement program is limited to the following types of legal services:

- Initial disposition and extension of CHIPS orders;
- Placement of children in out-of-home care, including temporary physical custody orders and placement orders;
- Voluntary placements of children into out-of-home care and conversion of voluntary placements to court-ordered placements;
- Termination of parental rights (TPR), including developing grounds for TPR and presenting TPR cases to the court;
- Finalizing adoptions for children in out-of-home care; and
- Establishing legal guardianship (Chapter 48) for children in out-of-home care.

Within the broad types of legal services identified above, specific legal services can include consulting with child welfare case managers; determining potential cases for court action; receiving and organizing information about cases; petitioning the court; providing legal notice of hearings; calling witnesses; preparing legal briefs and orders; obtaining signed court orders; appellate activities; and related legal support of county child welfare agencies.

Legal services related to JIPS and Delinquency orders, juvenile probation, restitution, and placement of children in secure detention or juvenile corrections under Chapter 938 do not qualify for the legal services reimbursement program. Juvenile justice activities are generally not IV-E reimbursable, except for placement of children in IV-E related out-of-home care (foster homes, group homes and non-secure residential care centers). Therefore legal actions under Chapter 938 cannot be included in the legal services reimbursement program. In situations where legal actions under Chapter 48, including TPR, adoption and guardianship, are performed for children subject to a Delinquency or JIPS order, the legal actions under Chapter 48 do qualify for the legal services reimbursement program. While it is possible that some legal actions under Chapter 938 could qualify for IV-E reimbursement, the situations would be very limited and the cost allocation documentation needed to determine the amount of allowable legal staff time would be burdensome and prone to IV-E audit disallowances. To minimize the potential for audit problems, DCFS is limiting the legal services reimbursement program to legal actions under Chapter 48. In developing their reimbursement programs, counties may only include the portion of child welfare legal services attributable to Chapter 48.

Legal Services Agreements

To participate in the legal services reimbursement program, county human/social service departments must develop agreements with the DA or CC office that provides legal services to the county child welfare agency. The agreement must define the amount of legal staff time and other legal services devoted to child welfare cases and the responsibilities of each agency. The agreement must identify how the IV-E reimbursement will be used to improve legal services for child welfare cases.

County human/social service departments and their DA/CC offices must both participate in the agreement for DHFS to approve the county's request for IV-E reimbursement. A signed copy of the agreement between the agencies must accompany the application to DHFS for IV-E reimbursement.

The agreement should identify the responsibilities of the DA/CC office in providing legal services to the child welfare agency. Examples of provisions applicable to the DA/CC office that should be included in the agreement include:

1. Identify specific staff who will provide the amount of child welfare legal services agreed upon by the child welfare agency and the DA/CC office.
2. Specify the method that will be used by the DA/CC office to verify the amount of staff time spent on child welfare cases.
3. Represent the child welfare agency for children in out-of-home care and pursue permanency for children in accordance with permanency plans, including adoption and legal guardianship.
4. Represent the child welfare agency for TPR cases and diligently pursue TPR as requested by the agency and in accordance with professional legal judgment.
5. Promptly process requests for legal actions, prepare legal documents and provide direction to child welfare agency staff regarding the preparation of legal documents.

6. Provide written explanations for denials or returns of child welfare agency requests and document reasons for actions on cases citing applicable law.
7. Consult with case workers and their supervisors on cases, preparation of legal documents, providing testimony and obtaining court orders.
8. Attend child welfare agency meetings and training sessions to update workers on new laws or legal policies and procedures.
9. Manage requests for child welfare legal actions efficiently and within time frames agreed upon with the child welfare agency. If a backlog does occur, provide corrective action strategies to address the backlog.

The agreement should also identify the responsibilities of the child welfare agency in assisting the DA/CC office in providing legal services. Examples of provisions applicable to the child welfare agency that should be included in the agreement include:

1. Provide legal staff with current case information, updated case files, available case data and other necessary information prior to any filing or court dates.
2. Work closely with legal staff in preparation of cases to achieve goals specified by the child welfare agency and the court.
3. Assist legal staff to arrange and conduct interviews of witnesses, including arranging child care and performing any necessary follow ups.
4. Work closely with legal staff to prepare for court hearings and participate in pre-hearing meetings.
5. Meet requests for technical support made by legal staff in a timely manner.

The agreement should specify how DA/CC office expenses will be reported to the county human/social service department and how reimbursement received by the human/social department will be used by the DA/CC office. Responsibilities for fiscal record keeping should also be addressed in the agreement. (See Page 7 for more detail on time reporting.)

Legal Services Staff

The legal services reimbursement program can be used to support legal staff in DA or CC offices, legal staff based in the child welfare agency, or legal services purchased by the child welfare agency from private providers.

For DA offices, attorney positions are authorized at the state level by the Department of Administration (DOA). DA offices wishing to participate in the legal services reimbursement program should contact Stuart Morse in the State Prosecutors Office within DOA (contact information on Page 10). The State Prosecutors Office will work with DA offices to identify sources of match, establish fiscal management processes and seek additional position authority.

For DA Offices, salary and fringe benefit costs for attorney positions are funded with state General Purpose Revenue (GPR). The GPR funding for attorney positions is budgeted on a state fiscal year (July 1 – June 30) basis, so counties that subcontract with their DA office may need to do so a state fiscal year basis. Costs for other staff, such as paralegals and clerical staff, are typically paid by the county, so the match for counties where the DA offices handle child welfare cases can include a mix of state GPR funds and county funds.

For CC offices and other county staff providing legal services for child welfare cases, identification of match expenditures, fiscal management processes and additional position authority must be addressed at the local level in accordance with county fiscal procedures.

The legal services reimbursement program can also be used for legal staff based directly in the child welfare agency or purchases of legal services from private providers. If some legal staff are based in the child welfare agency, the actions of those staff should be addressed in the agreement with the DA/CC office to coordinate overall child welfare legal services. If child welfare legal services are purchased by the county, the types of situations where services will be purchased should be identified in the county plan for the reimbursement program. Purchases of legal services by counties can be done directly by the child welfare agency or through the CC office.

Under s. 48.09, Stats., county boards may have either DA offices or CC offices represent child welfare agencies. In the event that changes are considered to what child welfare matters are handled by the DA's office, the county must follow the notification procedure specified under s. 48.09(5), Stats.

Allowable Legal Services Costs

The following are examples of allowable costs for IV-E reimbursement:

- Salary and fringe benefit costs for attorneys and paralegals in DA offices who work on child welfare cases.
- Salary and fringe benefit costs for attorneys and paralegals in CC offices who work on child welfare cases.
- Salary and fringe benefit costs for attorneys and paralegals in child welfare agencies who work on child welfare cases.
- Costs for legal services for child welfare cases purchased from private providers;
- Salary and fringe benefits for investigators, witness coordinators and related staff who work on child welfare cases.
- Salary and fringe benefits for clerical support staff preparing petitions, court orders and other documents for child welfare cases.
- Costs associated with legal actions for child welfare cases including filing fees, costs for expert witnesses and transcription costs.
- Costs for travel and training for legal staff who work on child welfare cases, including participating in child welfare training.
- Supplies and services necessary for legal staff who work on child welfare cases.

Note: Staff or activities included in the legal services reimbursement program must be based in the DA/CC office with which the child welfare agency has a legal services agreement. If child welfare legal staff or activities are based in another county agency, the county human/social services department must have a legal services agreement with that agency in order for those staff or activities to be included in the legal services reimbursement program. No IV-E funds may be passed through to an agency without a legal services agreement in place.

Costs Not Allowed for Reimbursement Program

The IV-E reimbursement program does not apply to the costs of judges, clerks of courts, guardians ad litem, public defenders and other court-related staff who may be involved in child welfare legal proceedings, but do not represent the child welfare agency. Only legal staff who represent the child welfare agency may be included in the legal services reimbursement program.

General administrative costs of DA/CC offices cannot be used as match for the legal services reimbursement program. Only staff time and other expenses that can be direct charged to Title IV-E can be included in the reimbursement program.

General county administrative or overhead (AMSO) costs cannot be used as match for the legal services reimbursement program. Under the approved IV-E cost allocation plan, general administrative costs must be allocated using the RMTS results. Thus administrative expenses cannot be used as match for the legal services reimbursement program.

The purchase or rental of computers, other equipment or vehicles also cannot be included in the legal services reimbursement program.

Allocation of Legal Staff Time

To meet federal requirements for direct charging costs to IV-E funds, legal staff and other legal services costs must be directly related to legal services for child welfare cases. Attorneys and other legal staff must be either dedicated full-time to child welfare cases or the specific portion of time for legal staff who work part-time on child welfare cases must be identified. County human/social service departments are responsible for working with their DA/CC office to ensure that the amount of legal staff time and other expenses charged to the legal services reimbursement program corresponds with the amount of legal services performed for child welfare cases.

In developing budgets for the IV-E reimbursement program, the amounts of legal staff time included should be determined based on actual past experience with child welfare cases. For staff who are devoted less than 100% to child welfare legal actions under Chapter 48, the percentages of staff time devoted to Chapter 48 activities should be determined based on past experience and periodically verified to ensure the percentages are accurate.

Counties can determine the specific method used to allocate legal staff time and other expenses to the legal services reimbursement program. It is recommended that legal staff time be tracked using time slips or other form of time reporting. The method should be consistent with cost allocation methods used by the DA or CC office for other funding sources including federal grants. Counties are responsible to ensure that the allocation method used meets state single audit requirements and other applicable audit requirements.

Since IV-E funds are earned on a reimbursement basis in accordance with actual allowable expenditures, the time reporting results will determine what a county actual earns under the legal services reimbursement program. Counties are advised to make sure that their DA/CC office understands that the amount of IV-E funds will depend on actual allowable expenditures and to budget conservatively in hiring additional staff. If DA or CC offices overestimate the amount of IV-E funds they will receive through the county, the DA or CC office will create a budget deficit in their office.

Example: An attorney is budgeted at 50% for child welfare activities, but based on the time reporting results, only 40% of the attorney's actual time was spent on reimbursable activities. For that year, only 40% of the attorney's cost can be claimed for the legal services reimbursement program. This will reduce the amount of IV-E reimbursement to support the cost of the attorney position.

Counties are also advised that funding legal staff with IV-E revenue could limit their flexibility to have those legal staff handle other types of cases. For example, if an attorney handles exclusively Chapter 48 legal actions, having the attorney handle any Chapter 938 legal actions would reduce the IV-E reimbursement to the county.

Sources of Match

The match expenses used to claim IV-E reimbursement must be from non-federal public funds and based on expenditures by a public agency from those public funds. Expenses used to claim IV-E reimbursement for legal services cannot be used as match for other federal funding sources.

Counties receive various types of funds from the state and child welfare agencies also receive funds from local revenue sources. Local tax levy funds are acceptable as IV-E match. Community Aids funds received from DHFS contain state GPR and other sources which can be used as match. Agencies should refer to previous guidance from DHFS on the use of Community Aids funds to match federal sources.

Of funds distributed specifically for child welfare services by DHFS, the IV-E Incentive program funds can be used as match. The Incentive program funds have been previously earned by the State and are equivalent to GPR once distributed to local agencies. Safe and Stable Families and Independent Living program funds are federal funds and cannot be used as IV-E match.

The match used to draw federal IV-E reimbursement can include new cash expenditures and existing expenditures for legal services. The legal services reimbursement program does not require additional county expenditures to draw IV-E funds, but if counties increase spending on legal services, the amount of IV-E reimbursement will increase proportionately.

DA offices should consult with the State Prosecutors Office regarding how DA funding from the state can be used as match for the legal services reimbursement program.

Applications to DHFS

The county human/social services department must apply to participate in the legal services reimbursement program. Applications must include 1) budget information, 2) program description and 3) a copy of the agreement between the county department and the DA/CC office regarding child welfare legal services. Applications will not be approved by DHFS without a legal services agreement between the agencies.

The budget sheet must identify the total amount of costs, the amount that will be claimed for IV-E reimbursement; and the amount and sources of match expenditures. The IV-E reimbursement is based on the total budget and will not be controlled by individual line item. The budget information will be used by DHFS to set the IV-E reimbursement limit for the contract with the county. The amount of actual IV-E reimbursement will depend on the amount of allowable expenses reported to DHFS.

If the IV-E reimbursement will be used to increase the number of legal staff positions, the application should include an explanation of the actions needed to obtain position authority and an estimated time frame for hiring additional staff. DA offices should work with the State Prosecutors Office to obtain additional position authority through the s. 16.505 process.

The IV-E reimbursement must be used to expand child welfare legal services or other child welfare activities. The IV-E funds cannot be used to supplant existing county expenditures for legal services. The application must explain how the IV-E funds will be used to expand services.

Applications will be reviewed by the Bureau of Programs and Policies within the Division of Children and Family Services and by DHFS Area Administration regional offices. Additional information may be requested if questions arise about the applications submitted by counties.

Contracts

Once legal services reimbursement programs have been approved by the Division of Children and Family Services, counties will be issued an appendix to their state/county contract for the IV-E reimbursement. Separate CARS lines will be established for the IV-E reimbursement.

The contract appendices will be issued annually by DCFS. Once counties begin participating in the legal services reimbursement program, the contract will continue to be issued on an annual basis. Updated budget sheets and program descriptions will be needed annually for contracts in subsequent years. Should the amount of legal services expenses in a year exceed the projected amount originally used for that year's contract, a contract modification will be needed from DCFS to increase the reimbursement limit.

Contract appendices will be issued for CY 2003 for applications received in CY 2003. Contracts will be effective January 1, 2003 for allowable expenses for legal services already incurred, provided that counties have agreements in place that meet the requirements for the legal services reimbursement program. No IV-E reimbursement can be provided for legal services until the agreement between the child welfare agency and the DA/CC office has been finalized.

A numbered memo will be issued in 2003 explaining the procedure for CY 2004 contracts, including the applicable IV-E reimbursement rate.

All reimbursement will be based on expenses reported to DHFS through the CARS system. Reimbursement will only be made for actual expenses incurred by counties and no contract advances will be made to counties for this program.

Since IV-E funds can only be claimed on a reimbursement basis, if counties do not claim the full amount authorized under their legal services contract, there is no "carryover" of unused IV-E pass-through funds to the next year.

Subcontracts between the county human/social services department and the DA/CC office may be effected by the timing of when new position authority can be obtained by the DA or CC office.

Consortiums

Counties can form a consortium for purposes of the legal services reimbursement program. A single county can serve as the fiscal agent for the consortium. The county acting as the fiscal agent is responsible for submitting fiscal information for the contract, issuing subcontracts and making fiscal arrangements with the other members of the consortium.

Consortiums can be established for the full range of child welfare legal services or limited functions with the individual counties handling the remainder of the functions. In situations where legal services are handled through the consortium, then each of the counties must be a party to the agreement with the legal services provider. If counties participate in a consortium for limited functions, they can have a separate legal service reimbursement contract for the individual county functions as well as participate in the consortium contract for the limited joint functions.

Multiple counties can work with a single DA office, CC office or private legal services provider to fund legal staff to work with the multiple counties. An example is an attorney specializing in termination of parental rights (TPR) who could work with multiple counties as TPR cases come up. If a single attorney works with multiple counties, however, steps may be necessary with courts to ensure the attorney is recognized to represent the child welfare agency in each of the counties in which the attorney will handle cases. For DA offices, the process for being appointed a special prosecutor in another county might apply to these situations.

CARS Reporting

The CARS reporting impact includes both reporting expenses for IV-E reimbursement and reporting expenses for DHFS administrative use.

For reimbursement purposes, CARS profiles 350, 351 and 352 have been established for the legal services reimbursement program. CARS profile 350 is used to report expenses related to CHIPS, foster care and other non-adoption activities. CARS profile 351 is used to report expenses related to TPR and adoption. CARS profile 352 is the reimbursement line based on the total reported on profiles 350 and 351. The net IV-E reimbursement rate for CY 2003 is 33%. For subsequent years, based on the expenses reported on profile 351, a IV-E reimbursement rate based on statewide adoption activity will be developed.

Counties should not report any expenses used as match for the legal services reimbursement program on CARS lines 301, 682 or 683. These lines are for reporting purposes only and do not affect the amount of reimbursement from DHFS. The lines are used with the RMTS results to determine the amount of administrative expenses eligible for federal IV-E reimbursement. For reporting purposes, expenses used as legal services match should be included by counties on CARS line 561. This procedure of using CARS line 561 will prevent match expenses for legal services from being included by DHFS in the pool of local agency costs that the RMTS results are applied to.

Counties should retain their own documentation of costs used as legal services match for local audit purposes.

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